S.B.Civil Second Appeal No.250/2005

Puran Ram & Anr. vs. Ram Lal & anr.

Date : 22.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the appellants.

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Heard learned counsel for the appellants.

The brief facts of the case are that according to the plaintiffs/appellants, they entered into an agreement to purchase an agriculture land from the defendant on 4.1.1979 for a consideration of Rs.17,000/- and the plaintiffs paid Rs.11,000/- to the defendant on the same day i.e. 4.1.1979. The plaintiffs filed suit for specific performance of contract in the year 1990.

According to learned counsel for the appellants, in the year 1983, Section 13A was inserted in Rajasthan Colonisation Act by which it was provided that the transaction of sale or agreement for sale can be regularised on depositing certain amount. The plaintiffs, therefore, deposited that amount vide challan no.56 dated 13.2.1990. Since the plaintiffs deposited Rs.3,000/-, which was liability of the defendant, therefore, the plaintiffs was ready to pay the balance amount to the seller at the time of registration of the document. The plaintiffs requested the defendant to comply with the terms and

conditions of the sale agreement and get the sale deed registered in favour of the plaintiffs. Since the defendant failed to execute the sale deed, therefore, the plaintiffs filed the suit for specific performance of contract.

The defendant submitted written statement and denied the agreement for sale of property in question. The defendant took a plea that she was an old lady and she used to give the land for cultivation on contract basis to the plaintiffs. In that transaction, some documents were got executed by the plaintiff. According to the defendant, therefore, she did not apply for the sale permission before any authority at any time.

The trial court framed the issues and thereafter, held that the plaintiffs proved the agreement to sale dated 4.1.1979 but instead of decreeing the suit for specific performance of contract, passed the money decree against the defendant after holding that the plaintiffs failed to prove their readiness and willingness to perform their contract.

The plaintiffs preferred appeal against the judgment and decree dated 20.5.2000 which was dismissed by the appellate court vide judgment and decree dated 23.9.2004. Hence, this second appeal.

According to learned counsel for the appellants, the two courts below committed serious error of law in

dismissing the suit of the plaintiffs for specific performance of contract on the ground of plaintiffs' failed to prove their readiness and willingness to perform their part of the contract.

According to learned counsel for the appellants, when the defendant denied the agreement itself, then the plaintiffs were not required to prove the readiness and willingness and for that purpose, learned counsel for the appellants relied on the judgment of this Court in the case of Gulam Mohammed vs. Mst. Mariyam reported in 1984 RLW 321.

According to learned counsel for the appellants, in view of the fact that the plaintiffs did not obtain permission for sale of land and when law was amended and it was provided that penalty can be deposited for the purpose of getting regularisation of transaction of sale, then the plaintiffs themselves deposited the required amount and, therefore, the plaintiffs thereafter sought the decree for specific performance of contract and in view of the above fact, the suit of the plaintiffs was not barred by time and there was no delay in filing the suit. It is also submitted that the plaintiffs' readiness and willingness can be inferred from the entire facts.

I have considered the submissions of learned counsel for the appellants.

The plaintiffs' case is that they entered into

agreement to purchase the land on 4.1.1979. There is no explanation what they did thereafter till Section 13A was inserted in the Rajasthan Colonisation Act.

It is settled law that when there is requirement of seeking permission before sale of the property and the agreement is executed before obtaining the sale permission, then seeking permission by the seller is an implied condition in the agreement and, therefore, the persons seeking enforcement of the contract can seek relief of specific performance of contract even prior to sale permission issued by the competent authority, therefore, the plaintiffs not filing the suit for specific performance of contract from 4.1.1979 to 1990 has not been explained nor the plea that in the year 1983, law was amended constitute any cause indicating readiness and willingness of the plaintiffs to perform their part of contract.

So far as in a case where the agreement itself has been denied by the defendant, on the basis of the facts of the particular case, the Court may refuse to entertain the defence of the defendant taken on the basis of the legal ground that the plaintiff was not ready and willing to perform his part of contract for seeking specific performance of contract but it is not necessary that in all cases where the defendant has denied the agreement for sale of the property, the plaintiff is not required to prove his readiness and willingness to perform his part of the contract. If it is held that in a case where the agreement

is denied by the defendant, then the plaintiff is not required to prove his readiness and willingness, then that will be nothing but putting cart before horse as the plaintiff will know from the defendant's written statement whether he should have pleaded or not about his readiness and willingness to perform his part of the contract.

In the facts of this case, it is clear that the two courts below have not decreed the suit for specific performance of contract and now the plaintiffs are seeking specific performance of contract dated 4.1.1979 in the year 2005. This Court feels that it will not be good exercise of discretion to allow the specific performance of contract after such a long period as the suit was filed after inordinate delay.

In view of the above, I do not find any merit in this appeal. No substantial question is involved in this appeal.

Accordingly, this second appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya